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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,808	01/28/2002	Edward J. A. Pope	POPE#6(CIP)3	3730

7590 07/26/2005

W. Edward Johansen
11661 San Vicente Boulevard
Los Angeles, CA 90049

EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

10/058,808

Examiner

Margaret G. Moore

Applicant(s)

POPE ET AL.

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:
- (a) ☐ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.
2. ☒ The appeal brief filed on 09 May 2005 is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) ☒ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) ☐ other: _____.
4. ☐ Because of the dismissal of the appeal, this application:
- (a) ☐ is abandoned because there are no allowed claims.
 - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) ☐ is before the examiner for consideration.

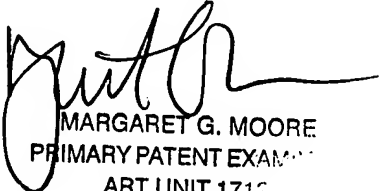
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1. With regard to the timeliness of applicants' appeal brief, please note 37 C.F.R. 1.192, sections (a) and (b) which discusses the response time for filing an appeal brief. Applicants had 2 month from the time of filing the Notice of Appeal to file the Brief.
2. For the record, the amendment filed 5/9/05 which amended the scope of claim 8, would not have been entered at this point in prosecution. This amendment was filed on or after the date of the filing of an appeal brief and was not limited to canceling claims or rewriting claims into independent form. See 37 C.F.R. 41.33(b) and (c).
3. As an aside the Examiner also notes that the Brief as filed was defective in that it did contain all of the necessary headings.


MARGARET G. MOORE
PRIMARY PATENT EXAMINER
ART UNIT 1712